IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 426 of 1999

WITH

CRIMINAL REVISION APPLICATION NO. 427 OF 1999
WITH
CRIMINAL REVISION APPLICATION NO. 428 OF 1999
AND
CRIMINAL REVISION APPLICATION NO.429 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GANI MOHAMAD FAKIRBHAI VORA

Appearance:

MR KP RAVAL, ADDL. PUBLIC PROSECUTOR for Petitioner

MR KB PANDE for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/04/2000

ORAL COMMON JUDGEMENT

1. These are revision applications by the State of Gujarat challenging the order passed by the learned Special Judge [Prevention of Corruption Act], Vadodara, who by his order dated 23rd June 1999 granted the applications by the four accused at exh.7, 14, 15 and 16 for discharge u/s 227 of the Criminal Procedure Code in Special Case No. 5/98.

2. The four accused, as per the FIR and the complaint lodged, were members of the police force who on the date of the incident as per the events narrated by the complainant, are guilty in respect of offences u/s 323, 325, 201, 217, 384 and 511 of the Indian Penal Code read with section 7 and 13[1][d] read with section 13[2] of the Prevention of Corruption Act.

3. At the stage of framing of the charge, the said four accused gave separate applications being exh.7, 14, 15 and 16 in Special Case No. 5/98, u/s 227 of the Criminal Procedure Code praying for discharge. The learned Special Judge [PCA], after hearing the parties and after perusing the prima facie material on record, was pleased to grant the applications and passed an order for discharge. Hence, the present revision applications at the instance of the State.

4. I have heard the learned counsel for the petitioner - State extensively and have perused such material on record to which my attention has been drawn. In my opinion, the impugned order is eminently sustainable and does not suffer from any infirmity or vice which would require interference by way of the present revisions. On the facts and circumstances of the case, I see no reasons to interfere in the discretionary jurisdiction of this Court u/s 397 read with section 401 of the Criminal Procedure Code.

5. The impugned order passed by the learned Judge discharging the four accused u/s 227 of the Criminal Procedure Code is based on four broad principles.

5.1 Neither the injured nor the witnesses of the injured were able to identify the four accused or any of the four accused in an identification parade held for the purpose.

5.2 The injured complainant who was injured over the eye had gone for treatment immediately after the injury to one Dr. Thakorbhai Bhatt whose statement has been

recorded. This Dr. Thakorbhai Bhatt has stated in his deposition before the police that the injured complainant had in fact given the reason for injury, and this reason given by the injured was to the effect that he was injured by some metallic object while he was climbing into the truck. Obviously this is a very plausible and reasonable explanation of an injury suffered by a person who was admittedly on the date of the incident driving the truck in question. On the other hand, a person who has been assaulted by the police would not suppress this fact from the private doctor to whom he has gone for treatment.

5.3 Another aspect is that the four accused being Government servants, and supposedly being on duty at the time of alleged incident, could not be prosecuted without sanction u/s 197 of the Criminal Procedure Code and section 19 of the Prevention of Corruption Act. Obviously no such sanction is on record.

5.4 Further more, the entire investigation is found by the learned Special Judge to have been conducted in a casual manner and not in accordance with section 17 of the Prevention of Corruption Act. On this aspect, it is specifically found that the investigation is not conducted by Inspector of Police under an appropriate notification issued in accordance to first proviso to section 17 of the Prevention of Corruption Act, nor was it conducted by a Deputy Superintendent of Police or a Police Officer of equivalent rank within the meaning of section 17[c] of the said Act.

6. On these broad aspects, the learned Special Judge came to the conclusion that there is an absence of even prima facie material on record, on the basis of which it could possibly be said that, on recording detailed evidence, there is at least a possibility of recording a conviction. In the premises, when the learned Special Judge came to a conclusion that there is even the absence of a remote possibility of recording conviction, the order of discharge u/s 227 of the Criminal Procedure Code is eminently justified.

7. In the premises aforesaid, there is no substance in these revision applications and the same are therefore dismissed. Rule discharged.

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